

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Monique West	Team: Team # 5	CCRB Case #: 201402735	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 03/18/2014 8:05 PM	Location of Incident: Bedford Avenue and DeKalb Avenue; 79th Precinct stationhouse	Precinct: 79	18 Mo. SOL 9/18/2015	EO SOL 9/18/2015	
Date/Time CV Reported Fri, 03/21/2014 4:51 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 03/21/2014 4:51 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. POM Andrew Ho	11741	941907	079 PCT
3. SGT David Leonardi	04982	930557	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Andrew Ho	Force: At Bedford Avenue and Dekalb Avenue in Brooklyn, PO Andrew Ho pointed his gun at § 87(2)(b)	
B.SGT David Leonardi	Force: At Bedford Avenue and Dekalb Avenue in Brooklyn, Sgt. David Leonardi pointed his gun at § 87(2)(b)	
C. Officers	Force: At Bedford Avenue and Dekalb Avenue in Brooklyn, officers pointed their guns at § 87(2)(b)	
D.POM Andrew Ho	Discourtesy: At Bedford Avenue and Dekalb Avenue in Brooklyn, PO Andrew Ho spoke rudely to § 87(2)(b) and § 87(2)(b)	
E.POM Andrew Ho	Abuse: At Bedford Avenue and Dekalb Avenue in Brooklyn, PO Andrew Ho seized § 87(2)(b)'s property.	
F.POM Andrew Ho	Abuse: At Bedford Avenue and Dekalb Avenue in Brooklyn, PO Andrew Ho searched the car in which § 87(2)(b) was an occupant.	
G.POM Andrew Ho	Force: At the 79th Precinct stationhouse in Brooklyn, PO Andrew Ho hit § 87(2)(b)'s head against a wall.	
H.POM Andrew Ho	Force: At the 79th Precinct stationhouse in Brooklyn, PO Andrew Ho used physical force against § 87(2)(b)	
I.SGT David Leonardi	Force: At the 79th Precinct stationhouse in Brooklyn, Sgt. David Leonardi used physical force against § 87(2)(b)	

### Case Summary

On March 21, 2014, § 87(2)(b) filed the following complaint with the Civilian Complaint Review Board (CCRB) via phone (encl. C1-2).

On March 18, 2014, at approximately 8:05 p.m., § 87(2)(b) was driving in the vicinity of Bedford Avenue and DeKalb Avenue in Brooklyn, where he encountered Officer Andrew Ho and Sgt. David Leonardi of the 79<sup>th</sup> Precinct. The following allegations resulted:

- **Allegation A- Force: At Bedford Avenue and DeKalb Avenue in Brooklyn, PO Andrew Ho pointed his gun at § 87(2)(b)**
- **Allegation B- Force: At Bedford Avenue and DeKalb Avenue in Brooklyn, Sgt. David Leonardi pointed his gun at § 87(2)(b)**
- **Allegation C- Abuse: At Bedford Avenue and DeKalb Avenue in Brooklyn, officers pointed their guns at § 87(2)(b)**
- **Allegation D- Discourtesy: At Bedford Avenue and DeKalb Avenue in Brooklyn, PO Andrew Ho spoke rudely to § 87(2)(b) and § 87(2)(b) § 87(2)(g)**  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)
- **Allegation E- Abuse: At Bedford Avenue and DeKalb Avenue in Brooklyn, PO Andrew Ho seized § 87(2)(b) s property. § 87(2)(g)**  
§ 87(2)(g)  
§ 87(2)(g)
- **Allegation F- Abuse: At Bedford Avenue and DeKalb Avenue in Brooklyn, PO Andrew Ho searched the car in which § 87(2)(b) was an occupant. The § 87(2)(g)**  
§ 87(2)(g)  
§ 87(2)(g)
- **Allegation G- Force: At the 79<sup>th</sup> Precinct stationhouse in Brooklyn, PO Andrew Ho hit § 87(2)(b) s head against a wall.**
- **Allegation H- Force: At the 79th Precinct stationhouse in Brooklyn, PO Andrew Ho used physical force against § 87(2)(b)**
- **Allegation I- Force: At the 79th Precinct stationhouse in Brooklyn, Sgt. David Leonardi used physical force against § 87(2)(b) § 87(2)(g)**  
§ 87(2)(g)  
§ 87(2)(g)

### Results of Investigation

#### Civilian Statements

**Complainant/Victim:** § 87(2)(b)

- § 87(2)(b) *is a black man who stands 6'3" tall and weighs 185 pounds. He has black hair and brown eyes.* § 87(2)(b)  
§ 87(2)(b)

#### CCRB Testimony

On March 21, 2014, § 87(2)(b) provided an initial statement to the CCRB (encl. C2). On April 7, 2014, § 87(2)(b) was interviewed at the CCRB (encl. C3-5). § 87(2)(g)  
§ 87(2)(g)

On March 18, 2014, § 87(2)(b) was sitting in his mother's car, a burgundy 2003 Nissan Maxima, at Sedan Place and Atlantic Avenue for approximately one minute eating chicken. He saw a friend he knows only as § 87(2)(b) identified through the investigation as § 87(2)(b) and asked him if he wanted a ride. § 87(2)(b) accepted the ride.

§ 87(2)(b) was on his way to a gas station when he stopped at a red light on Bedford Avenue. An unmarked black Impala pulled beside him in the bicycle lane to his right. § 87(2)(b) knew that the men in the vehicle were police officers because of past experiences of seeing undercover officers in his neighborhood.

The officer in the passenger's seat of the vehicle identified through the investigation as Sgt. David Leonardi and described by § 87(2)(b) as a 35-year-old, 6'0" tall white male with a heavy build of 230-240 pounds in plainclothes, said something about § 87(2)(b)'s lights. Unsure of what Sgt. Leonardi said, § 87(2)(b) turned his high beams on and continued towards the gas station. § 87(2)(b) was in the left lane and the gas station was on the right side of the street. § 87(2)(b) signaled and switched to the right lane. When he was on Bedford Avenue, the same unmarked car put its flashing lights on. § 87(2)(b) pulled over at Bedford Avenue and Dekalb Avenue.

The driver of the vehicle, who § 87(2)(b) identified by name as Officer Andrew Ho and described as a 32-year-old, 6'0" tall Asian male with short black hair and a thin build in plainclothes, approached the driver's side of § 87(2)(b)'s vehicle and Sgt. Leonardi approached the passenger's side. § 87(2)(b) could not recall how he obtained Officer Ho's name. The officers shone flashlights in his face and in § 87(2)(b)'s face. Prior to this, § 87(2)(b) had thought to himself that he should get his license and registration ready but he did not remember if he had actually reached for his license and registration.

§ 87(2)(b) put his hand up to his face to block the light and saw Officer Ho pointing a gun at his head. Sgt. Leonardi had his gun pointed at § 87(2)(b)'s head. [In his original statement, § 87(2)(b) alleged that both officers had their guns pointed at his own head.] A second unmarked black Chevy Impala pulled in front of § 87(2)(b)'s car. Two unidentified officers, both white males, exited the vehicle with their guns pointed at § 87(2)(b). Officer Ho told § 87(2)(b) and § 87(2)(b) to, "Get the fuck out of the car." [In his original statement, § 87(2)(b) did not mention profanity. He only stated that the officers told him to get out of the car.]

§ 87(2)(b) put the car in park and then he and § 87(2)(b) both exited the vehicle. § 87(2)(b) was placed in handcuffs immediately by Officer Ho. § 87(2)(b) did not see what happened to § 87(2)(b). A marked car arrived with two additional unidentified officers. Officer Ho asked § 87(2)(b) for his identification. § 87(2)(b) told him that it was in his wallet. Officer Ho reached into his pocket, removed his wallet, and retrieved his identification. Officer Ho patted § 87(2)(b) down and then searched all of his pockets. § 87(2)(b) had pockets on his jacket and on his jeans. § 87(2)(b) had his cell phone and a hair pick in his pockets. Officer Ho removed these items from his pockets. Nothing else was recovered from § 87(2)(b)'s pockets.

Officer Ho searched § 87(2)(b)'s car. He searched the front and back seats, the glove compartment and attempted to physically lift the seats, without success. Nothing was recovered from the car. After searching the car, Officer Ho searched § 87(2)(b) again exactly as he had searched him the first time. § 87(2)(b) was then transported to what the investigation determined to be the 79<sup>th</sup> Precinct stationhouse by Officer Ho and Sgt. Leonardi.

Officer Ho asked § 87(2)(b) what his name was but § 87(2)(b) remained silent. § 87(2)(b) was processed as John Doe. § 87(2)(b) was transported to another stationhouse, identified through the investigation as the 78<sup>th</sup> Precinct, to have a breathalyzer test conducted. The breathalyzer test was never administered. § 87(2)(b) later discovered that the officers claimed that he refused the breathalyzer.

§ 87(2)(b) was taken back to the 79<sup>th</sup> Precinct stationhouse and patted down in the parking lot by Officer Ho. § 87(2)(b) was placed in a holding cell, still in handcuffs, when an officer threw his hat on the ground. § 87(2)(b) did not see whether Officer Ho or Sgt. Leonardi did this. Officer Ho grabbed § 87(2)(b) by his hair and banged his head against the wall, causing his forehead to make contact with wall. § 87(2)(b) did not know whether Officer Ho did this multiple times or just once. Officer Ho and Sgt. Leonardi punched § 87(2)(b) in his sides and back multiple times. § 87(2)(b) stiffened his body to protect himself from being hit. Officer Ho said, “You thought we were pussies. No one can see us back here.”

Sgt. Leonardi inappropriately patted down § 87(2)(b)'s private area. § 87(2)(b) When § 87(2)(b) questioned what he was doing, Sgt. Leonardi punched him in his private area multiple times.

Officer Ho never returned § 87(2)(b)'s driver's license or hair pick. § 87(2)(b)'s car was impounded. Neither he nor § 87(2)(b) had been drinking that day. They had no alcoholic beverages or open containers in the car.

§ 87(2)(b) had a previous back injury from an incident involving a ladder on January 28, 2014. After this incident, he suffered additional pain to his back. § 87(2)(b) was seen by § 87(2)(b) at § 87(2)(b)

### **Attempts to Contact Civilians**

Between April 16, 2014 and April 22, 2014, four attempts were made to contact § 87(2)(b) and voicemail messages were left on each attempt. On April 16, 2014 and April 22, 2014, please call letters were mailed to § 87(2)(b). On April 23, 2014, § 87(2)(b) left a voicemail message asking for a call back. On April 28, 2014, an additional attempt was made to contact § 87(2)(b). None of the letters sent to § 87(2)(b) have been returned by the United States Postal Service as undeliverable. On November 14, 2014, a search of the New York City Department of Correction database was conducted, concluding that § 87(2)(b) is not incarcerated. A BADS search reveals no arrest reports for the period of time that § 87(2)(b) was contacted. As of the date of this report, § 87(2)(b) has not contacted the CCRB to provide a statement.

According to the command log, only two people, aside from § 87(2)(b) were in the holding cells at the time that § 87(2)(b) was re-lodged into 79<sup>th</sup> Precinct when he alleged the force took place: § 87(2)(b) and § 87(2)(b). On August 22, 2014, addresses for § 87(2)(b) and § 87(2)(b) were obtained from their arrest reports and please call letters were mailed to them on that date and on September 3, 2014. The address for § 87(2)(b) did not include an apartment number. A Lexis Nexis search revealed four possible phone numbers for § 87(2)(b) and a complete address. On September 3, 2014, a please call letter was also sent to the complete address. Three of the numbers for § 87(2)(b) were no longer in service. On September 3, 2014 and September 5, 2014, calls were made to the fourth number and there was a busy signal on each call. On September 5, 2014, the letter sent to § 87(2)(b) at the incomplete address was returned by the USPS. On September 5, 2014, § 87(2)(b) called and stated that he did not observe anything out of the ordinary while he was in the holding cells at the 79<sup>th</sup> Precinct. He did not recall a man matching § 87(2)(b)'s description and did not recall an unusual encounter between a police officer and a civilian in the cell area. On September 8, 2014, a third call was made to that number. A woman answered the phone and stated that there was no one by the name § 87(2)(b) at that number. On September 12, 2014, a final letter was sent to § 87(2)(b) complete address. On August 22, 2014, searches of the New York City and New York State Department of Correction databases were conducted. There were no records for § 87(2)(b) or § 87(2)(b). As of the date of this report, § 87(2)(b) has not contacted the CCRB and none of the letters sent to his complete address were returned as undeliverable.

## **NYPD Statements:**

### **Subject Officer: SGT. DAVID LEONARDI**

- *Sgt. David Leonardi is a white man who stands 6'4" tall and weighs 250 pounds. He has brown hair and black eyes. At the time of the incident, he was § 87(2)(b) old.*
- *On March 18, 2014, Sgt. Leonardi worked in plainclothes from 1:48 p.m. until 10:45 p.m. with Officer Ho. He was assigned as the SET supervisor in an unmarked black crown victoria #§ 87(2)(b).*

### **Memo Book (encl. D2)**

At 8:05 p.m., there were two under arrest by Officer Ho on Bedford Avenue and DeKalb Avenue. At 8:10 p.m., Sgt. Leonardi arrived at the stationhouse. At 8:15 p.m., Sgt. Leonardi worked overtime at the 78th Precinct with perpetrator for chemical test. At 10 p.m., Sgt. Leonardi worked overtime at the 79th Precinct with perpetrator.

### **CCRB Testimony**

On May 28, 2014, Sgt. Leonardi was interviewed at the CCRB (encl. x).

On March 18, 2014, at approximately 8:05 p.m., Sgt. Leonardi and Officer Ho were travelling northbound on Bedford Avenue. They were stopped at a traffic light when a vehicle pulled up on their right hand side with its front headlight out. Sgt. Leonardi, whose window was down, told the driver of the vehicle, identified through the investigation as § 87(2)(b) that his front headlight was out. § 87(2)(b) whose window was also down, looked at them but did not say anything. Officer Ho repeated to § 87(2)(b) that his headlight was out. § 87(2)(b) continued to stare at them without saying a word.

When the light turned green, § 87(2)(b) looked at them and then hit the gas so hard that his wheels started to spin. He took off northbound down Bedford Avenue. Sgt. Leonardi and Officer Ho observed the vehicle continue at a fast rate of speed and swerve from the center lane to the right lane, back to the center lane and then to the left lane, weaving in and out of traffic. Officer Ho and Sgt. Leonardi together made the decision, about five blocks later, to conduct a car stop due to § 87(2)(b)'s reckless driving. Their intent upon stopping him was to tell him to slow down. At most, they intended to summons him.

Officer Ho approached the driver's side of the vehicle and Sgt. Leonardi approached the passenger's side of the vehicle. When Officer Ho reached the driver's side window, he asked § 87(2)(b) to roll his window down. § 87(2)(b) did not comply. § 87(2)(b) was given multiple commands to roll his windows down by Officer Ho. He looked forward and did not make eye contact with Officer Ho. After approximately 30 seconds of being asked to roll down the window, the passenger, identified through the investigation as § 87(2)(b) removed a silver object from underneath him and placed it underneath his seat. Sgt. Leonardi could not further describe the silver object and did not know what it was at the time.

Sgt. Leonardi began to fear for his safety because he did not know why they weren't opening the door, rolling down the windows or what the silver object in § 87(2)(b)'s hands was. The fact that § 87(2)(b) was attempting to discard the silver object caused him alarm. The car was still on and Sgt. Leonardi and Officer Ho wanted to make sure that § 87(2)(b) did not drive away.

Sgt. Leonardi drew his gun and ordered § 87(2)(b) at gun point, to keep his hands where he could see them. Sgt. Leonardi did not know if Officer Ho also drew his gun. Sgt. Leonardi commanded § 87(2)(b) to let him see his hands. § 87(2)(b) brought his hands from under the seat and put them on his lap. Sgt. Leonardi commanded him to open the door. He did not comply. § 87(2)(b) began to move, looking back and forth between the driver's side door and § 87(2)(b) as if he was looking for something. Sgt. Leonardi believed that § 87(2)(b)'s hands

stayed in plain view but he was not certain. Sgt. Leonardi made several commands for them to show him their hands, stop moving and to open the door. Neither of them complied. Sgt. Leonardi did not use profanity and did not hear another officer use profanity while ordering § 87(2)(b) and § 87(2)(b) out of the car. Sgt. Leonardi did not say, “Get the fuck out of the car” and did not hear another officer say this.

Approximately two minutes into the car stop, two unidentified plainclothes officers, who Sgt. Leonardi described as white males with silver hair in their late 40s-50s, saw Sgt. Leonardi and Officer Ho and parked their unmarked dark-colored Chevy Impalas, in front of § 87(2)(b)'s vehicle. They exited their vehicle but did not draw their weapons. Sgt. Leonardi could not identify the officers. He never saw them before and they were not from his command. Seeing the additional officers, § 87(2)(b) opened his door.

Officer Ho asked § 87(2)(b) to step out of the car and he complied. Once § 87(2)(b) was out of the vehicle, § 87(2)(b) opened the door on his side. Sgt. Leonardi told him to stay right there and to show him his hands. § 87(2)(b) was cooperative from this point on.

Officer Ho frisked § 87(2)(b) for weapons. He frisked him to make sure he didn't have any weapons and because of his failure to comply with orders. Sgt. Leonardi stated that he could not see where Officer Ho frisked him or if he searched him at this point because they were on the other side of the car. Sgt. Leonardi never learned whether Officer Ho searched § 87(2)(b) at that point. Officer Ho handcuffed § 87(2)(b) and brought him to the back of the vehicle.

Sgt. Leonardi asked § 87(2)(b) to step out of the vehicle. A strong smell of alcohol came from the vehicle. Sgt. Leonardi observed a silver flask protruding from underneath the seat. Sgt. Leonardi assumed this is what he saw in § 87(2)(b)'s hands. § 87(2)(b) was clearly intoxicated. He slurred his words, had a smell of liquor on his breath and had glazed eyes. Sgt. Leonardi frisked § 87(2)(b) for fear of his safety due to § 87(2)(b)'s furtive movements in the vehicle and his refusal to open the door. Sgt. Leonardi then brought § 87(2)(b) to the back of the vehicle.

§ 87(2)(b) refused to speak to the officers. He would not tell them his name or give them any pedigree information. He would not tell them why he was swerving from lane to lane or why he refused to open the door. He was completely mute. Upon talking to § 87(2)(b) Sgt. Leonardi realized that he was also intoxicated. His breath smelled of alcohol, he was stumbling and his eyes were glazed and wandering. Once Sgt. Leonardi smelled the alcohol on both individuals and saw the silver flask, both individuals were deemed to be under arrest.

§ 87(2)(b) was searched after he was in handcuffs. § 87(2)(b) was charged with § 87(2)(b). Sgt. Leonardi and Officer Ho transported § 87(2)(b) and § 87(2)(b) to the 79th Precinct. A marked sector car arrived and one of the officers transported § 87(2)(b)'s car back to the stationhouse. The marked car arrived after both § 87(2)(b) and § 87(2)(b) were in handcuffs. The officers were from Sgt. Leonardi's command but he did not recall who they were or what sector they were assigned to. There were no additional officers on scene. Officer Ho searched the car at the stationhouse. Sgt. Leonardi did not know what happened to the car afterwards and did not believe that the car was searched at the scene.

At the 79th Precinct, § 87(2)(b) and § 87(2)(b) were lodged, searched and placed in cells without incident. § 87(2)(b) was highly intoxicated and cooperative. § 87(2)(b) was still mute. Sgt. Leonardi did not remember if § 87(2)(b) had a hair pick or a comb. He did not see or hear of an officer taking § 87(2)(b)'s hair pick.

Sgt. Leonardi and Officer Ho transported § 87(2)(b) to the 78th Precinct. Two officers from one of the highway units responded to the 78th Precinct to conduct an interview with and a chemical test on § 87(2)(b). § 87(2)(b) still refused to speak and to blow into the breathalyzer. Once the highway officers finished their paperwork, § 87(2)(b) was transported back to the 79th Precinct where he was re-lodged and his arrest was processed. There was no incident with him in the cell

area. Sgt. Leonardi did not see an officer grab § 87(2)(b) by his hair and bang his head against the wall. Sgt. Leonardi did not punch § 87(2)(b) and did not see another officer do this.

Prisoners are searched before being placed in the cells. A frisk of the waistband, legs, upper body and groin is conducted. The prisoner's pockets are then searched and emptied. Writing utensils, keys, weapons and lighters are removed. This is standard procedure. Officer Ho frisked and searched § 87(2)(b) according to procedure before placing him in the cells and Sgt. Leonardi watched. Sgt. Leonardi did not punch § 87(2)(b) in his groin area and did not see another officer do this. Sgt. Leonardi never used force against § 87(2)(b) and did not see another officer do so.

When a person is arrested for DWI, their license is suspended and sent to the DMV. Their license does not get returned. This is standard procedure.

**Witness Officer: OFFICER ANDREW HO**

- *Officer Andrew Ho is an Asian man who stands 6'1" tall and weighs 220 pounds. He has black hair and brown eyes. At the time of the incident, he was § 87(2)(b) old.*
- *On March 18, 2014, Officer Ho worked in uniform from 2 p.m. until 10:35 p.m. with Sgt. Leonardi. He was assigned to SET in the 79th Precinct in an unmarked black crown Victorian #§ 87(2)(b). He worked overtime until 6:35 a.m.*

**Memo Book (encl. D8-9)**

At 8 p.m., Officer Ho conducted a car stop. Officer Ho observed a 2003 red Altima travelling northbound Bedford Avenue with no front headlight. Upon stopping, the driver/passenger refused to open windows/doors. A strong smell of alcohol and an open flask were observed. Driver:

§ 87(2)(b) Passenger: § 87(2)(b) At 8:05 p.m., two under arrest. At 8:15 p.m., § 87(2)(b) is lodged and § 87(2)(b) is transported to the 78th Precinct to be tested. At 9:30 p.m., Highway responds, PO Thomas. Driver refused and was transported back to house. At 11:30 p.m., § 87(2)(b) refused. § 87(2)(b) arrest ID# § 87(2)(b) § 87(2)(b) arrest ID # § 87(2)(b) At 1:30 a.m., § 87(2)(b) refused.

**Report of Refusal to Submit to Chemical Test (encl. D10)**

§ 87(2)(b) was arrested for operating a vehicle while in an intoxicated condition and operating while ability impaired by the consumption of alcohol. Officer Ho noted that § 87(2)(b) was driving recklessly at a high rate of speed with a broken headlight. Officer Ho smelled an odor of alcohol. § 87(2)(b) had bloodshot eyes. § 87(2)(b) refused to submit to a breath test and indicated his refusal by refusing to speak and answer questions in the presence of Officer Thomas of Highway 2 at the 78<sup>th</sup> Precinct.

**Intoxicated Driver Examination (encl. D11-12)**

Officer Ho noted that the keys were in the ignition and he observed § 87(2)(b) behind the wheel during the vehicle operation as evidence that § 87(2)(b) had been driving the vehicle. His breath had a moderate odor of alcohol, his face was flushed, his clothes were orderly but his attitude was stuporous, his eyes were bloodshot and his balance was swaying. § 87(2)(b) was swerving while operating his vehicle and Officer Ho observed an open container in vehicle which first led him to suspect that § 87(2)(b) was under the influence of alcohol. Officer Ho's conclusion was that § 87(2)(b) was under the influence of alcohol.

**CCRB Testimony**

On May 16, 2014, Officer Ho was interviewed at the CCRB (encl. D13-15). § 87(2)(g)

§ 87(2)(g)

Officer Ho and Sgt. Leonardi were the only officers in their vehicle. Officer Ho pulled up next to the vehicle and told the driver, who he identified as § 87(2)(b) to roll his window down. § 87(2)(b) complied. Officer Ho did not announce himself as a police officer at that point. His intention was only to inform § 87(2)(b) of his defective headlight. Officer Ho saw that § 87(2)(b)'s eyes were bloodshot and that he was squinting. Officer Ho believed him to be intoxicated. Officer Ho informed § 87(2)(b) that his headlight was out. § 87(2)(b) did not reply and accelerated at a high rate of speed, crossing into the right lane without signaling.

Officer Ho turned on his flashing lights and sirens to signal § 87(2)(b) to pull over. He was stopping § 87(2)(b) for having a defective headlight, driving at a high rate of speed, and switching lanes without signaling. Officer Ho could not estimate § 87(2)(b)'s speed but stated that his tires screeched as he pulled off. § 87(2)(b) stopped immediately, approximately a block down from where Officer Ho first encountered him.

Once Officer Ho reached the rear of § 87(2)(b)'s vehicle, he could see that § 87(2)(b) was rolling the windows up and locking the doors. Officer Ho also saw that § 87(2)(b) was shoving something silver and shiny underneath his seat. Officer Ho believed the object to be a weapon of some sort. He did not suspect it to be any weapon in particular. Officer Ho drew his weapon. He did not recall if Sgt. Leonardi drew his weapon as well. Officer Ho did not recall pointing his weapon at § 87(2)(b) or § 87(2)(b).

Officer Ho asked him approximately 10-15 times to roll down the window. Approximately 30 seconds to a minute later, § 87(2)(b) rolled down his window. Officer Ho asked § 87(2)(b) to exit the vehicle. Officer Ho never said, "Get the fuck out of the car" and did not recall hearing Sgt. Leonardi say this. § 87(2)(b) exited the vehicle. Officer Ho did not have any contact with § 87(2)(b). He was focusing on § 87(2)(b). He did not recall Sgt. Leonardi commanding § 87(2)(b) to do anything. § 87(2)(b) stepped out of the vehicle at the same time that § 87(2)(b) stepped out of the vehicle.

There was a strong smell of alcohol coming from § 87(2)(b)'s vehicle. Officer Ho also smelled alcohol on § 87(2)(b)'s breath. § 87(2)(b)'s previous driving infractions also led Officer Ho to believe that § 87(2)(b) was intoxicated. § 87(2)(b) did not stumble; he was walking at a very slow pace. Officer Ho immediately placed § 87(2)(b) in handcuffs and charged him with § 87(2)(b). § 87(2)(b) appeared to be intoxicated as well. He was stumbling and had bloodshot eyes. There was a strong smell of alcohol on § 87(2)(b) as well. Officer Ho observed this at the scene, at a time that he could not recall, and at the stationhouse. § 87(2)(b) was arrested as well. Officer Ho did not recall what § 87(2)(b) was charged with.

Officer Ho asked § 87(2)(b) for his name. § 87(2)(b) would not speak to Officer Ho or answer any questions that he asked. § 87(2)(b) did not give Officer Ho his identification or registration. When Officer Ho spoke to § 87(2)(b), § 87(2)(b) would only stare at him in response.

Officer Ho did not remember which other officers were at the scene or how many officers may have responded. Neither Officer Ho nor Sgt. Leonardi went over the radio regarding this incident until after § 87(2)(b) was in handcuffs. Officer Ho did not recall any other officers having their weapons drawn.

§ 87(2)(b) was frisked on the scene subsequent to arrest, as per protocol. § 87(2)(b) was not frisked or searched prior to being handcuffed. An open silver metal flask containing alcohol was found in § 87(2)(b)'s vehicle. Officer Ho did not recall whether he or Sgt. Leonardi recovered the flask nor did he recall when it was recovered. § 87(2)(b)'s car was not thoroughly searched until after § 87(2)(b) was brought back to the precinct; however, they may have conducted a limited search of the car at the scene to recover what § 87(2)(b) had placed under his seat. The car was vouchered because § 87(2)(b) refused to tell the officers whose car it was. Officer Ho conducted the search of § 87(2)(b)'s car at the precinct.



Officer Thomas, a black male, from a highway unit administered the test. Officer Ho was not sure which highway unit Officer Thomas was from. More officers were present but Officer Ho did not recall their names. § 87(2)(b) was acting erratically, standing on chairs while he was on camera.

There were no incidents between § 87(2)(b) and officers while he was in a holding cell at either precinct. Officer Ho and Sgt. Leonardi were the only two officers to interact with § 87(2)(b) while in the holding cells. They placed § 87(2)(b) in the holding cells at both precincts. Officer Ho did not grab § 87(2)(b)'s hair and bang his head against the wall. § 87(2)(b) was not punched by any officer in a holding cell. Officer Ho did not frisk § 87(2)(b)'s groin area and did not see an officer punch him in his groin area. Neither Officer Ho nor Sgt. Leonardi used force against § 87(2)(b) at any time. Officer Ho did not notice any injuries on § 87(2)(b) and § 87(2)(b) did not complain of any injuries to Officer Ho. Officer Ho did not use any profanity during this incident.

For a DWI charge, a person's license can be taken away. § 87(2)(b) was allowed to keep his license in this case. Officer Ho did not see § 87(2)(b) with a hair pick and did not take his hair pick.

### **Medical Records**

On § 87(2)(b), § 87(2)(b) was seen by § 87(2)(b) who provides rehabilitation services. He reported decreased low back pain caused by an on-the-job injury which occurred on January 28, 2014.

### **NYPD Documents**

#### **Property Voucher (encl. E22-29)**

A flask containing alcohol was vouchered as arrest evidence. Two cell phones with batteries and a set of keys on key chains were vouchered for safekeeping and then returned to § 87(2)(b). One cell phone was vouchered for safekeeping and returned to § 87(2)(b). A burgundy/maroon 2003 Nissan Maxima taken from § 87(2)(b) was vouchered. An inspection of the vehicle was performed by Officer Ho.

#### **Prisoner Holding Pen Roster (encl. E30-31)**

§ 87(2)(b) was logged into the 78<sup>th</sup> Precinct holding cells at 8:50 p.m. as John Doe. He was logged out at 10:10 p.m. to be sent back to the 79<sup>th</sup> Precinct stationhouse. The prisoner holding pen roster for the 79<sup>th</sup> Precinct could not be located for the incident date.

#### **Command Log (encl. E32, E44)**

At 8:15 p.m., § 87(2)(b)'s arrest was logged into the 79<sup>th</sup> Precinct command log. He was originally listed as John Doe. He was charged with § 87(2)(b) and his physical/mental condition was listed as intoxicated. At 8:20 p.m., he was sent to the 78<sup>th</sup> Precinct. At 10:20 p.m. he was returned to the 79<sup>th</sup> Precinct. At 5:36 p.m. on March 19, 2014, he was sent to Brooklyn Central Booking. § 87(2)(b) was logged into the command log as § 87(2)(b). His physical/mental condition was intoxicated. He was taken to Brooklyn Central Booking at 7:06 a.m. on March 19, 2014.

#### **Notice of Temporary Suspension and Notice of Hearing (encl. E48)**

§ 87(2)(b)'s driver's license was suspended on March 20, 2014 for his refusal to submit to a chemical test. The court suspension ended on § 87(2)(b), the date of the hearing. Any further action to be taken regarding his license was to be decided by the Department of Motor Vehicles on the date of the hearing.

### **Highway District-IDTU Technician Test Report/ Video (encl. E55-59)**

§ 87(2)(b) refused to answer all questions, remaining silent. He also refused to sign his name. Officer Thomas noted that § 87(2)(b) had a moderate odor of alcoholic beverage on his breath but refused the test.

### **Arrest for Incident and Disposition**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Status of Civil Proceedings**

- The Notice of Claim has been requested and will be added to the case file upon receipt.

### **Civilians' Criminal Conviction History**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian's CCRB History**

- § 87(2)(b) has filed the following CCRB complaints:

➤ § 87(2)(b)

### **Subject Officers' CCRB History**

- Sgt. David Leonardi has been a member of the service for 12 years and there are six substantiated CCRB allegations against him (encl. B3-6).
  - In CCRB case #200410123, an allegation that Sgt. Leonardi damaged an individual's property was substantiated. He received command discipline A.
  - In CCRB case #201107817, allegations that Sgt. Leonardi stopped, frisked and searched an individual were substantiated. He received instructions.
  - In CCRB case #201310961, allegations that Sgt. Leonardi refused to process a civilian's complaint and frisked an individual were substantiated and a command discipline was recommended.
- Officer Andrew Ho has been a member of the service for 8 years and there are four substantiated CCRB allegations against him (encl. B1-2).
  - In CCRB case #201212149, an allegation that Officer Ho stopped an individual was substantiated and charges were recommended.
  - In CCRB case #201310961, allegations that Officer Ho frisked and stopped individuals were substantiated and a command discipline was recommended.

### **Conclusion**

### **Identification of Subject Officers**

§ 87(2)(b) identified Officer Ho by name and described him as a 32-year-old 6'0" tall Asian male with short black hair and a thin build. Officer Ho is a § 87(2)(b)-old Asian male who stands 6'1" tall and weighs 220 pounds. He has black hair and brown eyes. Officer Ho admitted to stopping and approaching § 87(2)(b) and to processing his arrest. § 87(2)(g)

§ 87(2)(g). § 87(2)(b) described Officer Ho's partner as a 35-year-old 6'0" tall white male with a heavy build of 230-240 pounds. Sgt. Leonardi is a § 87(2)(b)-old white male who stands 6'4" tall and weighs 250 pounds. He has brown hair and black eyes. Sgt. Leonardi admitted to drawing his weapon upon stopping § 87(2)(b)'s vehicle and to escorting § 87(2)(b) into the cells. § 87(2)(g)

## **Investigative Findings and Recommendations**

### **Allegations Not Pleaded**

Sgt. Leonardi and Officer Ho testified that § 87(2)(b)'s vehicle was stopped because one of his front headlights was out. § 87(2)(b) was charged with this moving violation. § 87(2)(g)

§ 87(2)(b) was deemed to be under arrest once he stepped out of the vehicle and Officer HO smelled alcohol on his breath. He was frisked and searched subsequent to a lawful arrest.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b)'s license was suspended and confiscated as per procedure for a DWI.

§ 87(2)(g)

**Allegation A- Force: At Bedford Avenue and DeKalb Avenue in Brooklyn, PO Andrew Ho pointed his gun at § 87(2)(b)**

**Allegation B- Force: At Bedford Avenue and DeKalb Avenue in Brooklyn, Sgt. David Leonardi pointed his gun at § 87(2)(b)**

**Allegation C- Abuse: At Bedford Avenue and DeKalb Avenue in Brooklyn, Officers pointed their guns at § 87(2)(b)**

It is undisputed that Officer Ho and Sgt. Leonardi drew their weapons during the stop of § 87(2)(b) and § 87(2)(b). § 87(2)(b) alleged that upon stopping and approaching his vehicle, Officer Ho pointed his gun at § 87(2)(b)'s head and Sgt. Leonardi pointed his gun at § 87(2)(b)'s head. Two unidentified officers then arrived and both pointed their guns at § 87(2)(b).

Sgt. Leonardi stated that upon stopping § 87(2)(b)'s vehicle, § 87(2)(b) and § 87(2)(b) refused to open the door or to roll down the windows as requested. In addition, Sgt. Leonardi saw a silver object in § 87(2)(b)'s hands which he could not positively identify but believed to be a weapon. Officer Ho stated that upon stopped § 87(2)(b)'s vehicle, § 87(2)(b) rolled his windows up and locked the doors. § 87(2)(g) § 87(2)(b) had a silver object in his hands that he had placed underneath the seat. The silver object was later revealed to be a flask. The property voucher confirms that a flask was recovered.

Police Department v. Gliner states that officers may point their firearms if they reasonably fear for their safety (encl. A1-20).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation D- Discourtesy: At Bedford Avenue and DeKalb Avenue in Brooklyn, PO Andrew Ho spoke rudely to § 87(2)(b) and § 87(2)(b)**

§ 87(2)(b) alleged that after drawing their weapons Officer Ho said, “Get the fuck out of the car.”

Officer Ho denied using profanity and Sgt. Leonardi did not hear him use profanity.

Profanity used by an officer to gain compliance during a stressful street encounter does not represent misconduct. PD v. White, OATH Index 78667/03 (2004) (encl. A22-25).

§ 87(2)(g)

**Allegation E- Abuse: At Bedford Avenue and DeKalb Avenue in Brooklyn, PO Andrew Ho seized § 87(2)(b) s property.**

§ 87(2)(b) alleged that Officer Ho took his hair pick while searching him and did not return it.

Officer Ho stated that he did not see § 87(2)(b) with a hair pick and did not take his hair pick. Officer Leonardi stated that he also did not see § 87(2)(b) with a hair pick and did not see or later learn that Officer Ho took his hair pick. § 87(2)(b) s hair pick was not vouchered.

§ 87(2)(g)

**Allegation F- Abuse: At Bedford Avenue and DeKalb Avenue in Brooklyn, PO Andrew Ho searched the car in which § 87(2)(b) was an occupant.**

§ 87(2)(b) alleged that after Officer Ho searched him, he searched his car. He searched the front and back seats, the glove compartment and attempted to physically lift the seats, without success. Nothing was recovered from the car.

Officer Ho stated that § 87(2)(b) s car was not thoroughly searched until after § 87(2)(b) was brought back to the precinct; however, they may have conducted a limited search of the car at the scene to recover what § 87(2)(b) had placed under his seat. The car was vouchered because § 87(2)(b) refused to tell the officers whose car it was. Officer Ho conducted the search of § 87(2)(b) s car at the precinct. Sgt. Leonardi stated that Officer Ho searched the car at the stationhouse. He did not believe that the car was searched at the scene.

An officer may transport a vehicle when it is necessary to impound the vehicle or move it out of concern for safety. In such cases, a limited search of the vehicle may be conducted. People v. Dickens, 870 N.Y.S.2d 698 (2008) (encl. A26-28).

§ 87(2)(g)

**Allegation G- Force: At the 79th Precinct stationhouse in Brooklyn, PO Andrew Ho hit § 87(2)(b) s head against the wall.**

**Allegation H- Force: At the 79th Precinct stationhouse in Brooklyn, PO Andrew Ho used physical force against § 87(2)(b)**

**Allegation I- Force: At the 79th Precinct stationhouse in Brooklyn, Sgt. David Leonardi used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that Officer Ho grabbed him by his hair and banged his head against the wall, causing his forehead to make contact with the wall. § 87(2)(b) did not know whether Officer Ho did this multiple times or just once. Officer Ho and Sgt. Leonardi then punched § 87(2)(b) in his sides and back multiple times. When § 87(2)(b) questioned why Sgt. Leonardi was frisking him, Sgt. Leonardi punched him in his private area multiple times.

Sgt. Leonardi did not see Officer Ho grab § 87(2)(b) by his hair and bang his head against the wall. Sgt. Leonardi did not punch § 87(2)(b) and did not see Officer Ho punch him. Officer Ho stated that he did not grab § 87(2)(b) by his hair and bang his head against the wall and § 87(2)(b) was not punched while in the cells by him or any other officer.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date